



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-63

SUBJECT: DONNA BATH
COUNTY CLERK/REGISTRAR OF VOTERS
WHITE PINE COUNTY

**SUPPLEMENTAL INFORMATION FOR THE PANEL
SEPTEMBER 25, 2006**

A. ADDITIONAL INVESTIGATIVE ACTIVITIES:

During the Panel Proceeding of September 8, 2006, it was determined that additional information was needed relating to NRS 281.481(2) as well as the Nevada election laws, including Nevada Revised Statute Chapters 293, 293B, and 293C and the corresponding chapters of the Nevada Administrative Code. The original complaint did not allege violations of NRS 281.481(2); therefore, the Panel requested that the investigation include NRS 281.481(2) in the findings and recommendation. The Panel also requested information on the duties and responsibilities of a county clerk when acting in the capacity of a county election official and registrar of voters.

- Obtained additional information from Ms. Bath relating to:
 - NRS 281.481(2)
 - Election duties and responsibilities of the County Clerk's Office
 - The County Clerk's Office assistance with City of Ely election processes
- Interviewed Brent Hutchings, former City of Ely Clerk/Administrator
- Interviewed James Alworth, current City of Ely Clerk/Treasurer
- Interviewed the requester, Stephen Marich, City of Ely Council Member
- Reviewed NRS & NAC 293, 293B, & 293C
- Reviewed the "Brief of Amicus Curiae" filed with the Supreme Court of the State of Nevada elucidating on the concerns of the Nevada Association of County Clerks and Election Officials related to the residency issues of the Ely 2003 mayoral election

B. RECOMMENDATIONS:

Based on the additional investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(1)
- NRS 281.481(2)

SPECIFIC REASON:

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281.

C. SUMMARY OF SUBJECT'S SUPPLEMENTAL RESPONSE:

In response to the Commission's concerns expressed during the Panel proceeding, Ms. Bath submitted the following supplemental response:

As cited in subsection 8 of NRS 281.501, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

Regarding NRS 281.481(2), Ms. Bath stated that she has not used her position to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself, any of her businesses, or any person to whom she has a commitment in a private capacity as defined by NRS 281.501(8). Specifically, she stated:

- (a) No one from the Chachas or Miller family lives in her household;
- (b) No one in her family is related in any way to the Chachas or Miller families;
- (c) Her family owns a hardware store and a sporting goods store in Ely;
- (d) No one from either the Chachas nor Miller families are employed by either business, and no one related to either family is employed in the county clerk's office;
- (e) George Chachas owns and operates a Radio Shack store in Ely. Ms. Bath has visited his store a total of approximately ten times during the 50 years she has lived in Ely. She states that the county clerk's office has purchased fax paper from the Radio Shack, as it is the only store in Ely that carries the paper;

John Chachas, brother to George Chachas, has an insurance agency in Ely, but Ms. Bath has no insurance policies through his agency.

Ms. Bath's husband and brother-in-law own a business called "General Dental". "General Dental" rents a building in Ely owned by Mr. Miller on a monthly basis.

John Chachas currently serves as a county commissioner; therefore, the county clerk's office has a professional relationship with him.

George Chachas is the elected Mayor; therefore, the county clerk's office has a professional relationship with him as well as the other elected officials in White Pine County and the City of Ely.

In regard to NRS 281.481(1), Ms. Bath restated that she has not sought or accepted any gift service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence her in her position or cause her to depart from the faithful and impartial discharge of her public duties. She stated that she would have applied the law exactly the same as she did in these circumstances whether it had been Mr. Chachas, Mr. Miller, or her best friend. Ms. Bath stated that Ely is a very small community, they all know, see and visit with each other on a regular basis. It is rare that residents don't know almost everyone in their community on a first name basis.

Regarding the question on whether the county clerk's office had previous contracts with the City of Ely to perform the city elections, Ms. Bath stated that, since being appointed as clerk in August 1994, the office has always been asked by the City of Ely to be involved in and assist with city elections. The county owns all of the election equipment, including ballot boxes, voting booths, counting machines and supply boxes for the precinct workers. The county has always let the city "borrow" the equipment in a spirit of good working relationships.

Ms. Bath stated that, approximately five years ago, she approached the city council and advised them that the election equipment they were using to do elections was not going to be re-certified. She advised them that she was going to apply for federal funding through the Secretary of State's office on behalf of White Pine County, to purchase "certified" election equipment. She stated that she told them she would apply on behalf of White Pine County and the City of Ely so they would be included in the licensing and would be able to utilize the equipment. She stated that she never heard a word back from the city. She stated that she proceeded to apply for the election equipment on behalf of White Pine County only. Ms. Bath stated that White Pine County received approximately \$270,000.00 worth of election equipment that the county started utilizing in the 2004 Election Cycle.

Ms. Bath stated that she has worked very hard at keeping current on election matters since 1994. She just finished her last required classes in July 2006 to complete her national certification in election and registration administration from the National Election Center. She stated this certification took her three years and a lot of her personal funds to complete. Ms. Bath stated that all past city clerks, including the current clerk, Mr. Alworth, have called her for advice on election related matters on several occasions, and she has provided her expertise to them free of charge.

Ms. Bath stated that the city and the county clerks have had a good working relationship until about four and one-half years ago, when the conflict started between Mr. Miller and Mr. Chachas.

Ms. Bath restated that she became involved in the city challenge issues when it became a county matter. This is when Mr. Chachas challenged Mr. Miller's residency in a county election. She further stated that, since there was no resolution to the county challenge, the matter spilled over into the next city election cycle, which meant she still had to be involved in the matter. The issue ultimately went to the Nevada Supreme Court. She stated that there are several challenge issues intertwined over that four and one-half year time period.

Ms. Bath stated that Mr. Alworth came to her office and asked for her assistance in the 2005 city primary election. She stated she told him that, due to all of the challenges going on, she had no desire to become involved in the city election, especially after just finishing with the county elections a couple of months earlier. Ms. Bath stated that, after she received several calls from Mr. Alworth, she advised him that she would help him on a limited basis.

Ms. Bath stated that she advised the Secretary of State that she would assist the city with the ballot counting, but she saw many things wrong with how the city was doing its election. She stated that she knew she had to report these discrepancies to the Secretary of State's office since she was counting the ballots and her name and certification were going to be on the results.

Ms. Bath stated that the relationship between the city and the county continued to deteriorate after the primary election. She stated that she advised the city clerk that she would not continue to assist with the general election, but was contacted by Ellick Hsu, Nevada Secretary of State's office, asking that she reconsider and assist the city with its general election. Ms. Bath stated that she initially declined, but Mr. Hsu persisted. Ms. Bath stated that Mr. Hsu drafted a written agreement that would make the county responsible for the ballot counting only. Mr. Hsu was to travel to Ely to observe the election during the ballot counting process. Ms. Bath stated that she agreed and took the agreement before the county Board of Commissioners for their approval.

Ms. Bath stated that the authority by which she conducted the elections as clerk/registrar falls under several election programs administered by the election division of the county clerk's office. These programs include federal laws such as the National Voter Registration Act of 1993, the Help America Vote Act, the Motor-Voter Act, and state laws such as Nevada Revised Statutes, Chapters 293, 293B, 293C and the corresponding Nevada Administrative Code. Ms. Bath's election duties include:

- Conducting all primary, general, special and recall elections for White Pine County;
- Conducting school district, hospital and general improvement district elections;
- Conducting candidate filing for all county, school, hospital and general improvement district offices;
- Responsibility for calculating correct quantity and ordering of absentee ballots;
- Providing for the safe security, storage, transport, sealing, and final disposition of absentee ballots;
- Responsibility for the accurate tabulation and reporting of White Pine County elections;
- Receiving/filing all candidate campaign contribution/expense reports and Financial Disclosure forms;
- Recruiting and training of over fifty election workers for each election;
- Recruiting, training and assisting counting board & accuracy board members for elections;
- Responsibility for preparing and security of test run for the accuracy board;
- Preparation of sample ballots for federal, state, county, district & general improvement district offices;
- Providing for maintenance, storage and security of electronic voting machines and related equipment;
- Preparing, distributing and setup of electronic voting machines in polling locations in Ely, McGill, Ruth and Lund;
- Conducting countywide early voting at the permanent polling location;

- Oversee the optical scan absentee voting process;
- Maintaining county precinct maps and school district trustee maps;
- Preparation of the election data for programming;
- Implementation of all federal and state election laws and Nevada Administrative Code;
- Maintaining permanent voter registration applications and computer network system for approximately 5,000 registered voters;
- Maintaining on-line voter inquiry system;
- Responsibility for receiving, processing and verifying petitions;
- Providing handouts for and answer phone, e-mail, and over-the-counter questions for the general public;
- Providing voter lists and precinct maps upon request to political parties and candidates;
- Working closely with the Secretary of State regarding election matters;
- Preparing legislation and provide testimony and information to the Legislature

D. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) “Unwarranted” means without justification or adequate reason.

* * * * *

Provided due to the reference in NRS 281.481(2):

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (f) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

E. RESULTS OF INVESTIGATION:

Factual History:

The White Pine County Clerk's Office has provided election support to the City of Ely for several years. During this time, there has been a collaborative effort between the county and city to assist each other at each election using staff and common counting committees. The former and current city clerks both stated that they worked collaboratively with Ms. Bath in conducting city elections.

Recently, federal and state election laws have established standards for the election process and equipment required to be used throughout the State of Nevada. Currently, White Pine County has the license, certification and equipment approved to conduct elections; however, the City of Ely does not currently possess the election equipment, license or certification. There was an invitation given to the city to participate in receiving grant funds for joint licensing and certification of new election equipment, but no agreement was reached. Therefore, the City of Ely has relied on the White Pine County Clerk's Office for the election equipment as well as the County's license and certification to use the equipment.

During some of this time, challenges have been filed relating to the mayoral elections. In 2002 Mr. Chachas filed a challenge regarding Mr. Miller's residency. In 2003 Mr. Chachas filed a challenge regarding Mr. Miller's qualifications as a candidate. As county registrar of voters, Ms. Bath attempted to obtain a resolution to the residency matter by seeking direction from both the White Pine County District Attorney's Office and the Nevada Secretary of State's Office. The residency matter was not resolved until the Nevada Supreme Court ruled that Mr. Miller did not meet the residency requirements for his candidacy. The Nevada County Clerk and Election Officials filed a Brief of Amicus Curiae with the Supreme Court on this matter. The Brief sheds light on the subject of the authority of a registrar of voters and voter residency requirements. It contains several references to NRS 293 relating to the duties of a county clerk when acting in the capacity of a registrar of voters. Ultimately, Mr. Miller stepped down as mayor but was reappointed by the Ely City Council.

In 2005 Ms. Bath was requested by the Secretary of State's Office to provide election support to the City of Ely for its mayoral election. A controversy arose regarding an interpretation of the 50% plus one "rule" and two conflicting City of Ely ordinances. One ordinance stated that a candidate with 50% plus one or more votes is declared the winner of the race. Prior to the primary election, City Clerk James Alworth confirmed this position. After the primary, he discovered another ordinance stating that the top two vote-getting candidates would advance to the general election. State law supports the second ordinance. A Nevada Attorney General opinion was sought by the city regarding this matter. The opinion states that the two candidates receiving the most votes were to advance to the general election. The two candidates receiving the most votes, Mr. Miller and Mr. Chachas, were advanced to the 2005 general election ballot.

Recent correspondence from the Nevada Secretary of State's Office states that the City of Ely has requested the use of White Pine County/State owned voting machines, equipment and software for its upcoming 2007 city elections, but that such use ". . . is problematic for both

White Pine [County] and the State because such items were purchased with federal grant funds that can only be used for federal/state elections.” It is further suggested by the Secretary of State’s Office that the City of Ely coincide its city elections with the state/federal election cycle, and have White Pine County run the entire election.

The following is reprinted from the White Pine County Government website (<http://www.whitepinecounty.net/clerk/registrar.htm>):

“The Election Department within the Clerk’s Office is responsible for the administration of regular federal, state, county and district elections. They are responsible for the registration of eligible electors within the entire county of White Pine. We are responsible for informing the public, candidates and elected officials of election laws and procedures for petition filing, candidate filing, voting and registration. In accordance with state and federal laws. (sic) Our office is the custodian of all city and county registration records, all county election records and candidate filings.

Programs administered by this office include the National Voter Registration Act of 1993, HAVA (Help America Vote Act), motor-voter, on-site and counter voter registration, provide schools in-service education, certification, training and supervision of volunteer registrars working within White Pine County. Maintenance of accurate, up-to-date voter registration files, both manual and computerized signature verification and petition tracking; challenges, absentee voting by mail, early voting, maintenance of polling places and voting equipment, training and supervision of poll workers, occasional office staff.

Our office accepts candidate filings. We are responsible for the provision for preparation, distribution, security and tabulation of ballots and sample ballots. We are additionally responsible for reporting and certifying election results; retention of election records and the performance of election recounts.”

The Nevada Revised Statutes (NRS) Chapters 293, 293B and 293C and the corresponding chapters of the Nevada Administrative Code (NAC) establish the laws and regulations central to the authority and responsibility of county and city clerks acting in the capacity of election officials.

Allegations regarding NRS 281.481(2):

NRS 281.481(2) states:

“A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason."

* * * * *

NRS 281.501(8) states:

"As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection."

There is no credible evidence that suggests Ms. Bath used her position to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself, any business entity in which she has a significant pecuniary interest, or any person to whom she has a commitment in a private capacity to the interests of that person. During telephone interviews, neither the requester nor the former and current city clerks were aware of any relationships between Ms. Bath and Mr. Chachas as defined by NRS 281.501(8). Her involvement in the city elections appears to have been warranted as a result of:

- Years of collaboration between the county and the city regarding election processes;
- Her position as the county registrar of voters regarding challenges resulting from voter residency requirements;
- The request by the Secretary of State's office to assist with the 2005 city elections; and
- Being solely licensed and certified to use White Pine County/State owned voting machines, equipment and software.

There is no evidentiary basis in support of the Commission further investigating these allegations.

F. CONCLUSION:

Based on these additional investigative activities, the Executive Director hereby recommends that the panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegations that Ms. Bath violated NRS 281.481(1) or NRS 281.481(2). It is further recommended that this complaint be dismissed.

Prepared by: Matt C. DiOrio DATED: September 25, 2006

MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: Pat Hearn DATED: September 25, 2006

L. PATRICK HEARN
EXECUTIVE DIRECTOR